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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x
4 UNITED STATES OF AMERICA

5 v. MAALIK ALIM JONES

16 CR 19 (PGG)
Remote Teleconference

6 Defendant
7 -----x

8 New York, N.Y.
9 May 25, 2021
10 10:50 a.m.

11 Before:

12 HON. PAUL G. GARDEPHE
13 District Judge

14 APPEARANCES

15 AUDREY STRAUSS
16 Acting United States Attorney for the
17 Southern District of New York
18 ANDREW J. DeFILIPPIS
19 JESSICA FENDER
20 DAVID W. DENTON, JR.
21 Assistant United States Attorneys

22 BRILL LEGAL GROUP
23 Attorney for Defendant
24 PETER E. BRILL

25 ALSO ATTENDING: SABRINA SHROFF

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(The Court and all parties appearing via remote teleconference)

(Case called)

DEPUTY CLERK: Counsel for the government, please state your appearances.

MR. DeFILIPPIS: Good morning, your Honor. Andrew DeFilippis for the government. Also on the line for the government are Jessica Fender and David Denton.

DEPUTY CLERK: Counsel for defendant, please state your appearances.

MR. BRILL: Good morning, your Honor. It's Peter Brill on behalf of Mr. Maalik Jones. And your Honor has not yet made a ruling as to Ms. Shroff and her ability to come on the case, but Ms. Shroff is also on the line.

DEPUTY CLERK: And Mr. Maalik Alim Jones, you're on the line with us, correct?

THE DEFENDANT: Correct.

DEPUTY CLERK: Thank you.

THE COURT: All right. I issued a decision on Sunday concerning the government's application to reinstate the indictment in this case following the Second Circuit's remand.

The background of the case is that I sentenced the defendant on May 29, 2018 to an aggregate sentence of 35 years' imprisonment. One of the charges to which the defendant had pled guilty was a 924(c) charge. The government conceded on

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1 appeal that that charge could not stand under *United States v.*
2 *Davis*. And so the defendant's conviction on that count was
3 vacated, and the Second Circuit remanded for purposes of
4 resentencing on the other two counts that the defendant had
5 pled guilty to and been sentenced on.

6 This raised the issue of whether the government could
7 simply reinstate the indictment that had been dismissed at the
8 time of the defendant's sentencing. I concluded in the opinion
9 that I issued on Sunday that it wasn't appropriate, given the
10 Second Circuit mandate, for the previously dismissed indictment
11 to simply be reinstated.

12 So let me ask you, Mr. DeFilippis, how does the
13 government intend to proceed?

14 MR. DEFILIPPIS: Your Honor, the government is
15 reviewing and studying your Honor's opinion. There is, I
16 think, a substantial likelihood that the government will pursue
17 a superseding indictment, but before we do that or make any
18 final decisions on that, we are consulting with our office's
19 appeal unit as well as the Department of Justice, given the
20 implications that this case may have for other cases that are
21 similarly situated.

22 And so what we would propose, your Honor, if your
23 Honor is amenable to it, is that once we have had a chance to
24 complete those consultations, that we report back to the Court
25 on the course of action that we think we are going to take.

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1 But that's the status of the government's position right now.

2 THE COURT: Mr. DeFilippis, do you have a sense of how
3 long those internal discussions are going to take?

4 MR. DeFILIPPIS: Your Honor, I think we could report
5 back to the Court within two weeks or sooner than that, but
6 that's our best estimate.

7 THE COURT: All right. With respect to the conflict
8 issue regarding Ms. Shroff, many of the government's arguments
9 as to why it's inappropriate for her to assist appointed
10 counsel in representing Mr. Jones has to do with arguments that
11 either she or her former office, the Federal Defenders,
12 represented people who would be witnesses in a trial of
13 Mr. Jones. And at this point I don't know whether there's
14 going to be a trial. I don't know whether there's going to be
15 a superseding indictment. There are just a lot of
16 uncertainties about the case, and it would be very difficult
17 for me to conduct a Curcio hearing of Mr. Jones given all of
18 these uncertainties.

19 So I'm going to put the conflict issue aside for a bit
20 until I understand what the future of the case is going to be,
21 if there is going to be a superseding indictment, if there is
22 going to be a trial or whether in fact we are just going to
23 proceed with a resentencing.

24 Does defense counsel wish to say anything at this
25 point?

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1 MR. BRILL: Peter Brill, your Honor. No. Thank you.

2 THE COURT: All right --

3 MS. SHROFF: Your Honor, I'm sorry, this is
4 Ms. Shroff. May I just be heard? I know I'm still not any
5 part of this record.

6 THE COURT: Yes. Go ahead.

7 MS. SHROFF: Thank you. Your Honor, I just want to
8 clarify that the government has never said that they're going
9 to call either of the two individuals that they've discussed in
10 their conflict letters as witnesses; not once have they said
11 that. If they would in fact say that, that would give the
12 Court some clarity.

13 Number two, Mr. Jones sought to have me join his legal
14 team so that I could assist him with decisions that could occur
15 after the government decides what they're going to do in two
16 weeks. And I just wanted to flag that for the Court.

17 So, should Mr. Jones wish to speak to me about whether
18 or not he should in fact plead, should he not proceed with a
19 trial, should he fight a superseding indictment, I would not be
20 able to help Mr. Jones because the government still persists in
21 not allowing me to review the discovery in this case. And I
22 just wanted to say that because Mr. Jones had asked me to
23 inform the Court of those facts. So thank you for letting me
24 apprise you of that.

25 THE COURT: Well, just to respond to your point about

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1 whether the government has said -- well, I guess there's
2 nothing I can say about that. I take your point, Ms. Shroff,
3 that in docketed materials the government has not said that it
4 intends to call the individuals I referred to.

5 In any event, Mr. DeFilippis, you will send me a
6 letter in two weeks' time telling me where the government is in
7 terms of its internal deliberations?

8 MR. DeFILIPPIS: Yes, your Honor.

9 THE COURT: Mr. Brill, Ms. Shroff, anything else you
10 want to say on behalf of Mr. Jones?

11 MR. BRILL: Not from me, your Honor. Thank you.

12 MS. SHROFF: No, your Honor. Thank you.

13 THE COURT: All right. So I will await the letter
14 from the government within two weeks' time; and based on what
15 that letter says, we'll take the next appropriate steps. Thank
16 you all and good day.

17 MR. BRILL: Thank you.

18 MR. DeFILIPPIS: Thank you, your Honor.

19 (Adjourned)

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